

Maine Revised Statutes
Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES
Chapter 3: MENTAL HEALTH

§3864. JUDICIAL PROCEDURE AND COMMITMENT

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

- A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW).]
- B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD).]
- C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD).]
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:
 - (1) The patient's right to retain an attorney or to have an attorney appointed;
 - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
 - (3) How to contact the District Court; and [2009, c. 651, §20 (AMD).]
- E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW).]

[2009, c. 651, §20 (AMD) .]

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

[2007, c. 446, §2 (NEW); 2007, c. 446, §7 (AFF) .]

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD).]
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD).]
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [2015, c. 309, §6 (AMD).]
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [2015, c. 309, §7 (AMD).]
- E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [2015, c. 309, §8 (NEW).]

[2015, c. 309, §§6-8 (AMD) .]

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

- (1) To be mailed within 2 days of filing to the person; and
- (2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [1997, c. 422, §15 (AMD).]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 459, §7 (NEW).]

[1997, c. 422, §15 (AMD) .]

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [2009, c. 651, §21 (AMD) .]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [2009, c. 651, §21 (AMD) .]

C. [2007, c. 319, §10 (RP) .]

D. [2007, c. 319, §10 (RP) .]

E. The examiner shall report to the court on:

- (1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;
- (2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;
- (3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;
- (4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;
- (5) Whether adequate community resources are available for care and treatment of the person's mental illness; and
- (6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [2009, c. 651, §21 (AMD) .]

F. [2007, c. 446, §7 (AFF); 2007, c. 446, §3 (RP) .]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [2009, c. 651, §21 (NEW).]

[2009, c. 651, §21 (AMD).]

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [2007, c. 319, §10 (AMD).]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [2005, c. 519, Pt. BBBB, §10 (AMD); 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [2007, c. 319, §10 (AMD).]

[2009, c. 651, §22 (AMD) .]

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [2009, c. 651, §23 (NEW).]

[2009, c. 651, §23 (AMD) .]

7. Commitment. Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 459, §7 (NEW).]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [1995, c. 496, §6 (AMD).]

[2009, c. 651, §24 (AMD) .]

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF).]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF).]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [2009, c. 651, §25 (AMD).]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [2009, c. 651, §26 (AMD).]

[2009, c. 651, §§25, 26 (AMD) .]

8. Continued involuntary hospitalization. If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

[2007, c. 319, §10 (AMD) .]

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

[2007, c. 319, §10 (AMD) .]

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

[2007, c. 319, §10 (AMD) .]

11. Appeals. A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

- A. The appeal is on questions of law only. [1983, c. 459, §7 (NEW).]
- B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 459, §7 (NEW).]
- C. The order of the District Court remains in effect pending the appeal. [2007, c. 319, §10 (AMD).]
- D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 459, §7 (NEW).]

[2007, c. 319, §10 (AMD) .]

12. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

- A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [2007, c. 670, §19 (NEW).]
- B. The court's ruling that the person has been involuntarily committed; and [2007, c. 670, §19 (NEW).]
- C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [2007, c. 670, §19 (NEW).]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[2007, c. 670, §19 (NEW) .]

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[2007, c. 670, §20 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§3-6 (AMD). 1997, c. 422, §§13-19 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB9,10 (AMD). 2005, c. 519, §BBBB20 (AFF). 2007, c. 319, §10 (AMD). 2007, c. 446, §§2-4 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 472, §1 (AMD). 2007, c. 670, §§18-20 (AMD). 2009, c. 281, §3 (AMD). 2009, c. 651, §§20-26 (AMD). 2015, c. 309, §§6-8 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.
--